



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE [REDACTED] Office: Portland

Date: AUG 22 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application to Preserve Residence for Naturalization Purposes
under § 316(b) of the Immigration and Nationality Act, 8 U.S.C.
1427

IN BEHALF OF APPLICANT: Self-represented

Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant seeks to preserve his residence for naturalization purposes under § 316(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1427(b), as a lawful permanent resident who will be absent from the United States for the purpose of engaging in the development of foreign trade and commerce of the United States on behalf of an American firm or corporation or a subsidiary thereof engaged in the development of such trade and commerce.

The district director determined the applicant was not eligible for preservation of residence for naturalization purposes because his employment began prior to his being lawfully admitted for permanent residence.

On appeal, the applicant states that he has put up with much hardship in leaving the United States for Syria. The applicant states that his employment with [REDACTED] has been in two parts: from February 1991 to June 1993 and from September 1995 to the date of the application.

Section 316 of the Act provides, in pertinent part, that:

(b) Absence from the United States for a continuous period of one year or more during the period for which continuous residence is required for admission to citizenship (whether preceding or subsequent to the filing of the petition for naturalization) shall break the continuity of such residence except that in the case of a person who has been physically present and residing in the United States after being lawfully admitted for permanent residence for an uninterrupted period of at least one year and who thereafter, is employed by or under contract with the Government of the United States or an American institution of research recognized as such by the Attorney General, or is employed by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof more than 50 per centum of whose stock is owned by an American firm or corporation, or is employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence, no period of absence from the United States shall break the continuity of such residence if-

(1) prior to the beginning of such period of employment (whether such period begins before or after his departure from the United States), but prior to the expiration of one year of continuous absence from the United States, the person has

established to the satisfaction of the Attorney General that his absence from the United States for such period is to be on behalf of such Government, or for the purpose of carrying on scientific research on behalf of such institution, or to be engaged in the development of such foreign trade and commerce or whose residence abroad is necessary to the protection of the property rights in such countries of such firm or corporation, or to be employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence; and

(2) such person proves to the satisfaction of the Attorney General that his absence from the United States for such period has been for such purpose.

Matter of Graves, 19 I&N Dec. 337 (Comm. 1985), holds that the uninterrupted physical presence requirement of § 316(b) of the Act may not be construed to allow departures from the United States. Any departure from the United States for any reason or period of time bars a determination that an alien has been continuously physically present in the United States or present in the United States for an uninterrupted period during the period including the departure. Matter of Graves, *supra*, also holds that the effect of Rosenberg v. Fleuti, 374 U.S. 449 (1963), cannot be extended to statutory schemes which include a requirement of uninterrupted or continuous physical presence.

The applicant commenced employment with [REDACTED] in February 1991 and became a lawful permanent resident on October 16, 1992. He made departures in June 1994 and May 1995.

The record reflects the applicant's employment preceded his lawful admission for permanent residence. Consequently, he does not qualify for the benefits of § 316(b) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.